Calendar No. 1153

84TH CONGRESS, 1st Session | SENATE | REPORT No. 1141

AUTHORIZING THE CONSTRUCTION WITHIN GRAND TETON NATIONAL PARK OF AN ALTERNATE ROUTE TO UNITED STATES HIGHWAY 89, ALSO NUMBERED UNITED STATES 187 AND UNITED STATES 26, AND THE CONVEYANCE THEREOF TO THE STATE OF WYOMING

JULY 26, 1955.—Ordered to be printed

Mr. PAYNE (for Mr. BARRETT), from the Committee on Interior and Insular Affairs, submitted the following

REPORT

[To accompany S. 1917]

The Committee on Interior and Insular Affairs, to whom was referred the bill (S. 1917) to authorize the construction within Grand Teton National Park of an alternate route to United States Highway 89, also numbered U. S. 187 and U. S. 26, and the conveyance thereof to the State of Wyoming, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

EXPLANATION OF THE BILL

This measure would authorize an exchange of highway properties within the Grand Teton National Park. Involved in the exchange are approximately 25 to 30 miles of State and county highway properties in exchange for the conveyance of which to the United States, a new highway approximately 20 miles in length would be constructed by the United States along the east side of the park. This new highway section would then be conveyed to the State and would replace a portion of the present United States Highway 89 in the park.

The report of the Department of the Interior states that the sum of $1,525,000 is available for obligation by the Department in accordance with authorizations contained in the Federal Aid Highway Act of 1954, during the 1956 fiscal year, for the purpose of constructing an alternate route to United States Highway 89 within the park. If S. 1917 is enacted the Department of the Interior will be able to consummate the exchange of these highway properties.

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At the present time United States Highway 89 traverses the scenic portions of the Grand Teton National Park and is well adapted for tourist travel through the park. However, since it is a United States highway, it is used extensively by commercial vehicles. This extensive commercial use has rendered the highway completely inadequate for combined tourist and commercial traffic. The Department emphasizes that the highway is particularly unsuitable for commercial use because of its narrow width, need for realinement, and other limitations. If used solely as a tourist highway, however, it would be both safe and adequate for use by park visitors.

Unless the new route for United States Highway 89 is constructed, as is provided by S. 1917, the report of the Department of the Interior states that the cost of changing the present United States Highway 89 in order to handle both commercial and tourist traffic would be excessive.

The committee, therefore, recommends the enactment of S. 1917 as a means of making available better transportation facilities within the Grand Teton National Park, and, at the same time, providing for a substantial annual saving in park road maintenance cost.

DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D. C., July 22, 1955.

Hon. JAMES E. MURRAY,
Chairman, Committee on Interior and Insular Affairs,
United States Senate, Washington, D. C.

MY DEAR SENATOR MURRAY: Your committee has requested a report on S. 1917, a bill to authorize the construction within Grand Teton National Park of an alternate route to United States Highway 89, also numbered U. S. 187 and U. S. 26, and the conveyance thereof to the State of Wyoming, and for other purposes. This proposed legislation would authorize an exchange of highway properties whereby approximately 25 to 30 miles of State and county highway properties within the Grand Teton National Park would be conveyed to the United States for purposes of the park. In exchange for the conveyance of these State and county roads to the United States, a new highway section approximately 20 miles in length, to be constructed by the United States along the east side of the park, would be conveyed to the State. This new highway section would replace a portion of the present United States Highway No. 89 in the park.

We recommend the enactment of this bill.

This proposed exchange, which has been in contemplation by this Department for some time, would be equitable, in our opinion. It would benefit both Federal and State operations in that region. We have collaborated with the State of Wyoming in reaching what we consider to be an appropriate solution to various traffic and highway problems within Grand Teton National Park, as represented by this bill. The sum of $1,525,000 is available for obligation by this Department, in accordance with authorizations contained in the Federal Aid Highway Act of 1954, during the 1956 fiscal year, for the purpose of constructing an alternate route to United States Highway 89 within the park. Upon enactment of this proposed legislation, therefore, and the completion of such alternate route, we will be able to consummate the exchange of these highway properties.

Due to the expansion in recent years of both tourist and commercial travel in and through the park, there is a great need for a new route for United States Highway 89. The major portion of this highway is inadequate for both tourist and commercial traffic use. It is unsuitable particularly for the latter use because of its narrow width, need for realinement, and other limitations. It is well, adapted, however, because of its route through scenic portions of the park, to the handling of tourist travel into the park. If used solely as a tourist highway, it will contribute to the reduction of traffic hazards for visitors.

This proposed exchange will decrease the total mileage of park roads to be maintained as well as the cost per mile of such maintenance. Following the exchange, we would not have to keep the park roads open all year. This will in turn reflect a substantial annual savings in our park road maintenance operations. Construction of a new section of United States Highway 89 on the east side of the park, away from the heavily traveled tourist areas, will facilitate greatly the handling of commercial traffic. The new section would be constructed to a higher standard from a commercial traffic standpoint and it would be farther away from the mountains than the present route. Because of such location, therefore, as well as its wider roadway and more direct alinement, snow removal and other maintenance operations will be reduced materially. Unless the new route for United States Highway 89 is constructed, as contemplated under the terms of this bill, the cost of rehabilitation and realinement of the present United States Highway 89, which will be necessary for proper handling of commercial and tourist traffic, will be very heavy in the future. These costs will result from a need to widen the road, to keep it in repair as a result of commercial use, and to increase the thickness of the road and the width of the shoulders of the road to accommodate commercial vehicles.

The Bureau of the Budget has advised that there is no objection to the submission of this report to your committee.

Sincerely yours,

ORME LEWIS,
Assistant Secretary of the Interior.

EXECUTIVE OFFICE OF THE PRESIDENT,
BUREAU OF THE BUDGET,
Washington, D. C., July 20, 1955.

Hon. DENNIS CHAVEZ,
Chairman, Committee on Public Works,
United States Senate, Washington 25, D. C.

MY DEAR MR. CHAIRMAN: This is in response to your request for the views of the Bureau of the Budget on S. 1917, to authorize the construction within Grand Teton National Park of an alternate route to United States Highway 89, also numbered U. S. 187 and U. S. 26, and the conveyance thereof to the State of Wyoming, and for other purposes.

Under the provisions of this bill the Secretary of the Interior would construct an alternate route for United States Highway 89 in the Grand Teton National Park, and convey this to the State of Wyoming in exchange for the old highway and certain county roads in the park area. We are informed by the Department of the Interior that this bill will enable it to carry out a solution to traffic and highway problems in the park on which it has collaborated with the State of Wyoming.

The existing United States Highway 89 carries a heavy load of tourist and commercial traffic and is not suitable for the latter because of its narrow width and curves. It is well suited, however, for tourist travel because it passes through scenic portions of the park. When the alternate route is constructed, commercial traffic will be directed from the old section and the cost to the Department of the Interior of maintaining it will be reduced as a result. The new alternate route will be maintained by the State of Wyoming.

The alternate route is estimated to cost $1,900,000. The Department of the Interior now has available for obligation $1,525,000 for the project under the authorizations contained in the Federal Aid Highway Act of 1954. Authorizations for 1957 under that act will cover the remainder.

The Bureau of the Budget would have no objection to enactment of S. 1917.

Sincerely yours,

PERCY RAPPAPORT,
Assistant Director.

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Calendar No. 1154

84TH CONGRESS, 1st Session } SENATE { REPORT No. 1142

RETIREMENT INCOME TAX CREDIT FOR ARMED FORCES

JULY 26, 1955.—Ordered to be printed

Mr. BYRD, from the Committee on Finance, submitted the following

REPORT

[To accompany H. R. 291]

The Committee on Finance, to whom was referred the bill (H. R. 291) to extend the retirement income-tax credit to members of the Armed Forces, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

By virtue of this act, the Committee on Finance accepts the report of the Committee on Ways and Means, which is as follows:

PURPOSE

H. R. 291 would allow retired members of the Armed Forces who have not attained age 65 to qualify for the retirement income-tax credit allowed under section 37 of the Internal Revenue Code of 1954 in the same manner as other persons who retire under a public retirement system.

GENERAL STATEMENT

The Internal Revenue Code of 1954 (Public Law 591, 83d Cong.) provided a new tax credit for retirement income. This retirement income-tax credit as enacted by the House (H. R. 8300, 83d Cong.) was limited to individuals who had attained the age of 65. The Senate amended the House version of this provision to provide that persons who retire under a "public retirement system" may qualify for the credit without regard to whether or not they had attained the age of 65. In defining the term "public retirement system" the Senate specifically excluded a retirement fund or system established by the United States for members of the Armed Forces of the United States. Because the subject of eliminating the age requirement for eligibility for the retirement credit with respect to military personnel was not germane to the conference, the amendment was accepted by the conferees.

Your committee's bill would remove the discrimination existing under present law against members of the Armed Forces by allowing them to claim the retirement income tax credit under the same circumstances and to the same extent as retired civil servants and others under a pub ic retirement system. This provision will be of benefit to those persons who upon retirement from the Armed Forces do not obtain other employment This provision is not likely to benefit a retired person who obtains other employmnet, since the amount of retirement income on which the credit is computed each year cannot exceed $1,200 less the

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amount of any earned income in excess of $900. Thus, for persons who retire and then secure another job the retirement income tax credit would be reduced, dollar for dollar, for earnings over $900. For persons who receive $2,100 or more per year in earned income there would be no retirement income tax credit allowed.

Your committee has adopted an amendment to H. R. 291 so that the bill would apply only with respect to taxable years beginning after December 31, 1954.

The Department of Defense has recommended this legislation to the Congress. Your committee is unanimous in urging the enactment of H. R. 291, as amended.

It is estimated that the enactment of this bill will result in a loss of revenue of $6 million.

CHANGES IN EXISTING LAW

In compliance with subsection (4) of rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

SECTION 37 (F) OF THE INTERNAL REVENUE CODE

SEC. 37. RETIREMENT INCOME.

(a) GENERAL RULE.—* * *

* * * * * * *

(f) PUBLIC RETIREMENT SYSTEM DEFINED.—For purposes of subsection (c) (2), the term "public retirement system" means a pension, annuity, retirement, or similar fund or system established by the United States, a State, a Territory, a possession of the United States, any political subdivision of any of the foregoing, or the District of Columbia[; except that such term does not include a fund or system established by the United States for members of the Armed Forces of the United States].

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Calendar No. 1155

84TH CONGRESS, 1st Session | SENATE | REPORT No. 1143

INCOME TAX WITHHELD ON NONCASH REMUNERATION TO RETAIL COMMISSION SALESMEN

JULY 26, 1955.—Ordered to be printed

Mr. BYRD, from the Committee on Finance, submitted the following

REPORT

[To accompany H. R. 542]

The Committee on Finance, to whom was referred the bill (H. R. 542) to amend the Internal Revenue Code, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

By virtue of this act, the Committee on Finance accepts the report of the Committee on Ways and Means, which is as follows:

PURPOSE

This bill amends section 3402 of the Internal Revenue Code of 1954 by adding a new subsection which exempts from the withholding tax provisions certain noncash remuneration paid to retail commission salesmen.

GENERAL STATEMENT

Under present law, the term "wages" for purposes of the withholding tax on wages, includes remuneration for services performed by an employee, including the cash value of remuneration includible in gross income paid in any medium other than cash. However, there are exemptions from such withholding for certain types of taxable wages, such as wages paid agricultural laborers, ministers, etc.

The bill provides that when an employee is paid in a medium other than cash for services performed by him as a retail commission salesman, the remuneration will not be subjected to withholding if the individual is ordinarily compensated solely by way of cash commissions. It is required, under the bill as reported, that the employer in such cases file with the Secretary of the Treasury or his delegate any information with respect to the noncash remuneration that may be be required under regulations prescribed by the Secretary of the Treasury or his delegate

Employers who pay their retail salesmen on a commission basis frequently offer noncash prizes to salesmen who exceed their quotas or who achieve outstanding sales records and so on. The stimulus to sales promotion which is provided by these noncash prizes may be substantially lessened if the employer is required to withhold from the employee's wages to the extent of the fair market value of these prizes. The bill, therefore, exempts this noncash remuneration from the

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withholding tax. It does not, however, affect the taxability to the retail commission salesman of the noncash remuneration.

The bill is effective with respect to remuneration paid after the date of enactment of this bill.

No revenue loss is expected to result from the enactment of this bill.

CHANGES IN EXISTING LAW

In compliance with subsection (4) of rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets; new matter is printed in italics, existing law in which no change is proposed is shown in roman):

SECTION 3402 OF THE INTERNAL REVENUE CODE

SEC. 3402. INCOME TAX COLLECTED AT SOURCE.

(a) REQUIREMENT OF WITHHOLDING.—Every employer making payment of wages shall deduct and withhold upon such wages (*except as provided in subsection (j)*) a tax equal to 18 percent of the amount by which the wages exceed the number of withholding exemptions claimed, multiplied by the amount of one such exemption as shown in subsection (b) (1).

* * * * * * *

(i) ADDITIONAL WITHHOLDING.—The Secretary or his delegate is authorized by regulations to provide, under such conditions and to such extent as he deems proper for withholding in addition to that otherwise required under this section in cases in which the employer and the employee agree (in such form as the Secretary or his delegate may by regulations prescribe) to such additional withholding. Such additional withholding shall for all purposes be considered tax required to be deducted and withheld under this chapter.

(*j*) *NONCASH REMUNERATION TO RETAIL COMMISSION SALESMAN.—In the case of remuneration paid in any medium other than cash for services performed by an individual as a retail salesman for a person, where the service performed by such individual for such person is ordinarily performed for remuneration solely by way of cash commission an employer shall not be required to deduct or withhold any tax under this subchapter with respect to such remuneration, provided that such employer files with the Secretary or his delegate such information with respect to such remuneration as the Secretary or his delegates may by regulation prescribe.*

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Calendar No. 1156

84TH CONGRESS, 1st Session | SENATE | REPORT No. 1144

MANUFACTURERS' EXCISE TAX ON THE LEASES OF CERTAIN AUTOMOBILE UTILITY TRAILERS

JULY 26, 1955.—Ordered to be printed

Mr. BYRD, from the Committee on Finance, submitted the following

REPORT

[To accompany H. R. 3437]

The Committee on Finance, to whom was referred the bill (H. R. 3437) to amend the Internal Revenue Code of 1954 to provide for a maximum manufacturers' excise tax on the leases of certain automobile utility trailers, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

By virtue of this act, the Committee on Finance accepts the report of the Committee on Ways and Means, which is as follows:

GENERAL STATEMENT

Section 4217 of the 1954 code provides that "* * * the lease of an article (including any renewal or any extension of a lease or any subsequent lease of such article) by the manufacturer, producer, or importer shall be considered a taxable sale of such article."

Under this provision, if a manufacturer leases articles subject to a manufacturers' excise tax, the manufacturers' tax will apply to the amount of each lease payment on the same basis as if it were a sale.

This bill modifies the rule described above by adding a new subsection (d) to section 4216, relating to the definition of price, providing that the maximum tax imposed on the leasing of certain automobile trailers, or semitrailers, is to be an amount equal to the applicable tax rate (10 percent or 8 percent at the present time) multiplied by the fair market value of the trailer at the time of the initial lease. The taxpayer is given the option under the new subsection (d) to pay the tax in full at the time of the initial lease or to spread the taxpayments over the period of the lease payments. Under the latter option the tax payable with respect to each lease payment is to be an amount equal to the applicable tax rate multiplied by the amount of each lease payment until the total amount collected in this manner equals the maximum tax described above. Thereafter the lease payments are to be free of tax.

The new subsection (d) provides that the treatment described above is to be available for trailers or semitrailers suitable for use with passenger automobiles whether the trailers are subject to the 8-percent tax on trucks and similar items, or to the 10-percent tax on passenger automobiles, etc.

At the present time manufacturers of utility trailers who also maintain a rental business are discriminated against, relative to businesses which carry on either, but not both of these activities. Frequently the sum of the rental payments

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received on a utility trailer substantially exceeds the price at which a manufacturer would sell such a trailer, since each such rental payment includes not only a pro rata portion of the cost of the trailer but also a share of the expenses of maintaining the rental business as well. Thus, the tax payable by the manufacturer who leases utility trailers is likely to be substantially greater than the tax of the manufacturer who sells these trailers. Moreover, a competitor who may lease the trailers but does not manufacture them pays no excise tax at all.

Provision is made under the new subsection (d) for cases where a trailer is sold after having been leased for a period of time but not long enough for the payment of the full tax. In such cases it is provided that the tax payable at the time of the sale is to be the difference between the tax already paid and the maximum tax described above. However, in such cases the tax is not to exceed the applicable tax rate (at the time of the initial lease) multiplied by the actual sales price of the trailer.

The committee amendment also makes provision for articles which have been leased prior to the effective date of the bill. In such a case the bill, as amended, provides that the lease is to be considered a new lease as of the effective date of the bill and that taxes paid on prior lease payments are to be ignored in applying this provision. If no lease is in effect on the date of enactment of the bill the taxpayer is to consider the first lease made after that date as the initial lease.

This bill is to be effective on the first day of the first month beginning more than 10 days after the date of its enactment.

It is estimated that the revenue loss involved in this provision will be negligible.

CHANGES IN EXISTING LAW

In compliance with subsection (4) of rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets; new matter is printed in italics; existing law in which no change is proposed is shown in roman):

SECTIONS 4216 AND 4217 OF THE INTERNAL REVENUE CODE OF 1954

"SEC. 4216. DEFINITION OF PRICE.

"(a) Containers, Packing and Transportation Charges.— * * *

* * * * * * *

"(c) PARTIAL PAYMENTS.—In the case of—

(1) a lease *(other than a lease to which subsection (d) applies)*,

(2) a contract for the sale of an article wherein it is provided that the price shall be paid by installments and title to the article sold does not pass until a future date notwithstanding partial payment by installments,

(3) a conditional sales, or

(4) a chattel mortgage arrangement wherein it is provided that the sales price shall be paid in installments,

there shall be paid upon each payment with respect to the article that portion of the total tax which is proportionate to the portion of the total amount to be paid represented by such payment.

"*(d) LEASES OF CERTAIN TRAILERS.—In the case of any lease of a trailer or semitrailer taxable under section 4061 (a) and suitable for use in connection with passenger automobiles, there shall be paid, at the election of the taxpayer—*

(1) upon the initial value a tax at the applicable rate specified in section 4061 (a) based upon the fair market price on the date of such lease, or

(2) upon each lease payment with respect to such trailer or semitrailer, a percentage of such payment equal to the rate of tax which would be imposed upon the sale of such trailer or semitrailer, until the total of the tax payments under such lease and any prior lease equals the total tax. In any case where a trailer or semitrailer which has been leased is sold before the total tax has been paid, the tax payable on such sale shall be the difference between the tax paid on the lease payments and the total tax. For purposes of this paragraph, the term "total tax" means the tax computed, at the rate in effect on the date of the initial lease, on the fair market value on the date of such lease. However, in the case where a trailer or semitrailer which has been leased is sold before the total tax has been paid, the total tax shall not exceed a tax computed, at the rate in effect on the date of the initial lease, on the amount received on such sale (determined without regard to

section 4216 (b)) plus the total of the payments received by the lessor under any lease of such trailer or semitrailer.

'SEC. 4217. LEASE CONSIDERED AS SALE.

"For the purposes of this chapter, the lease of an article (including any renewal or any extension of a lease or any subsequent lease of such article) by the manufacturer, producer, or importer shall be considered a taxable sale of such article. *This section shall not apply to the lease of an article upon which the tax has been paid in the manner provided in section 4216 (d) (1) or the total tax has been paid in the manner provided in section 4216 (d) (2).*"

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Calendar No. 1157

84TH CONGRESS, 1st Session } SENATE { REPORT No. 1145

CLAIMS FOR FLOOR STOCKS REFUNDS

JULY 26, 1955.—Ordered to be printed

Mr. BYRD, from the Committee on Finance, submitted the following

REPORT

[To accompany H. R. 3712]

The Committee on Finance, to whom was referred the bill (H. R. 3712) to extend the period during which claims for floor stocks refunds may be filed with respect to certain manufacturers' excise taxes which were reduced by the Excise Tax Reduction Act of 1954, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

By virtue of this act, the Committee on Finance accepts the report of the Committee on Ways and Means, which is as follows:

PURPOSE

This bill amends section 3416 (a) (2) of the Internal Revenue Code of 1939 relating to the period for filing claims for floor stocks refunds with respect to refrigerators, quick-freeze units, and electric, gas, and oil appliances on which the tax was lowered by the Excise Tax Reduction Act of 1954. This bill removes the requirement in the 1939 Code that a claim for a credit or refund with respect to such floor stocks must have been filed before August 1, 1954, and provides instead that the claims for these credits or refunds must be filed on or before the 60th day after the date of enactment of this bill.

GENERAL STATEMENT

The Excise Tax Reduction Act of 1954 reduced the excise taxes on refrigerators, quick-freeze units, and electric, gas, and oil household appliances from 10 percent to 5 percent. The effective date of this reduction was April 1, 1954. Provision was made for refunds with respect to the higher tax which had been paid on floor stocks inventories of these appliances held by dealers (including wholesalers, jobbers, distributors, and retailers). Under the provision enacted, claims for these refunds had to be filed "before August 1, 1954." The refunds or credits were made to the manufacturer, producer, or importer of the appliance, who must reimburse the dealer for the amount of the refund prior to filing the claim for the refund (according to Treasury Department regulations).

For several reasons numerous manufacturers failed to file timely claims for this credit or refund. One reason given for failing to file timely claims was that July 31, 1954, fell on a Saturday and some taxpayers thought that in such a case the filing of claims on the following Monday (August 2) would be considered as timely. Others proceeded on the belief that if they filed their claim for a

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refund with their quarterly return, which also was due on July 31 (if they had not made use of the depositary receipt system) that the claim would be considered as timely filed if it bore a July 31 postmark on the envelope. Still other taxpayers who had made use of the Federal Reserve depositary receipt system in paying their prior month's collections of excise taxes were not required to file their tax returns until August 10. Some of these manufacturers, lacking detailed knowledge as to the floor stock refund provision, assumed incorrectly that the claims for credit with respect to the floor stock provision could be taken against these taxpayments otherwise due on August 10.

It should also be pointed out that the manufacturers had to compile and verify the claims of their numerous dealers before the July 31 date. Moreover, there was no provision in the law that the dealers must submit their claims to the manufacturer prior to the July 31 date. This made it necessary for the manufacturers to establish an arbitrary "cutoff" date prior to July 31 for the forwarding of claims from dealers. In the interest of covering as many of these claims as possible, some manufacturers waited so long that they were unable to file their own claim for refund or credit until the very end of the period allowed. This, coupled with any of the misunderstandings described above as to exactly when the period for the filing of the refund or credit ended, resulted in a late filing in many cases.

The Internal Revenue Service has long followed the practice of considering tax returns mailed on the due date as timely returns. This is done under the Commissioner's general power to grant temporary extensions of time for the filing of returns. However, no such rule has been applied in the case of claims. Revenue Ruling 110 published in 1953, for example, stated as follows:

"Ordinarily it is the position of the Bureau that a claim must be actually received prior to the expiration of the statute of limitations under section 332 (b) of the Internal Revenue Code and the fact that it was placed in the mails in ample time to reach the office of the collector or Commissioner by the expiration of the statutory period is not sufficient to constitute a 'filing' within the meaning of section 322 (b). (Cf. I. T. 1921, C. B. III—1, 345 (1924); *Pleasant Valley Wine Co.*, 14 T. C. 519; *Frank A. Gray*, 16 T. C. 262, 266.)"

The problem presented was recognized by Congress in the Internal Revenue Code of 1954 and section 7502 of the 1954 code provides that documents, other than returns, are to be deemed to be filed on time if, as indicated by the postmark on the envelope, they are mailed within the prescribed time to the proper office, even though received by such office after the time has expired. This provision in the 1954 code applied, however, only in the case of mailings after the date of enactment of the 1954 code, namely, August 16, 1954.

The difficulty of a manufacturer in submitting his claim for refund without specific provision for an earlier statutory cutoff date for the forwarding of the claims of his dealers was recognized in the case of the floor stock refund provided for electric light bulbs. In this case it was provided that the manufacturer in filing his claim for refund or credit was to have 1 month more than the dealers in submitting their claims to the manufacturer.

Your committee believes that the enactment of this bill giving manufacturers a "new start" for the filing of these claims for credit or refund under the Excise Tax Reduction Act of 1954 will remove the discrimination resulting from the 1954 act. The revenue loss is estimated to be less than $1 million.

CHANGES IN EXISTING LAW

In compliance with subsection (4) of rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

SECTION 3416 (A) OF THE INTERNAL REVENUE CODE OF 1939

SEC. 3416. FLOOR STOCKS REFUND ON REFRIGERATORS, QUICK-FREEZE UNITS, AND ELECTRIC, GAS, AND OIL HOUSEHOLD APPLIANCES

(a) IN GENERAL.—Where before April 1, 1954, any article subject to the tax imposed by section 3405 (a), section 3405 (b), or section 3406 (a) (3) has been sold by the manufacturer, producer, or importer, and on such date is held by a dealer and has not been used and is intended for sale, there shall be credited or refunded (without interest) to the manufacturer, producer, or importer an amount equal to the difference between the tax paid by such manufacturer, producer, or importer on his sale of the article and the tax made applicable to such article on and after April 1, 1954, if such manufacturer, producer, or importer—

(1) has paid such amount as reimbursement to the dealer who held such article on April 1, 1954; and

(2) files claim for such credit or refund before [August 1, 1954] *on or before the sixteenth day after the date of the enactment of H. R. 8712, Eighty-fourth Congress.*

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UNIVERSITY OF MICHIGAN LIBRARIES

Calendar No. 1158

84TH CONGRESS
1st Session

SENATE

REPORT
No. 1146

SOCIAL-SECURITY WAGE CREDITS FOR MILITARY SERVICE

JULY 26, 1955.—Ordered to be printed

Mr. BYRD, from the Committee on Finance, submitted the following

REPORT

[To accompany H. R. 5936]

The Committee on Finance, to whom was referred the bill (H. R. 5936) to provide wage credits under title II of the Social Security Act for military service before April 1956, and to permit application for lump-sum benefits under such title to be made within 2 years after interment or reinterment in the case of servicemen dying overseas before April 1956, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

By virtue of this act, the Committee on Finance accepts that part of the report of the Committee on Ways and Means, which follows:

PURPOSE

H. R. 5936, as amended, would provide a continuation for 9 months, through March 31, 1956, of the existing provisions of title II of the Social Security Act, relating to (1) old-age and survivors insurance wage credits for military service, and (2) the payment of lump-sum death benefits where a serviceman dying overseas is reburied in this country.

Under existing law these provisions would not apply to service or deaths after June 30, 1955.

GENERAL STATEMENT

Under the old-age and survivors insurance system, individuals who have served in the active military or naval service of the United States at any time since September 14, 1940, are, under certain circumstances, provided wage credits under the system of $160 per month for each month (or part thereof) of such service. Present law provides for these credits without any payment of taxes or the appropriation of funds to the old-age and survivors insurance trust fund. Under the existing provisions of law these wage credits will be provided only for service performed prior to July 1, 1955. H. R. 5936, as amended, extends this provision so that it will apply to service performed prior to April 1, 1956.

Your committee's bill also extends the provision of the old-age and survivors insurance system under which the 2-year period, for filing claims for lump-sum death payments in the case of reburial in this country of servicemen dying overseas begins to run from the date of reburial in this country instead of from the date of death overseas. This provision, which under existing law applies only in

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the case of deaths prior to July 1, 1955, would be extended to cases of deaths occurring before April 1, 1956.

In view of the anticipated legislative recommendations of the House Select Committee on Survivors Benefits established pursuant to the authority of House Resolution 35 of the 84th Congress, it is your committee's view that the extension of these provisions is desirable as a temporary measure pending the formulation of a long-range solution to the problem of retirement and related benefits for military personnel and their survivors based upon the recommendations of this select committee.

The enactment of this legislation was recommended by the Department of Defense.

Your committee is unanimous in urging the favorable consideration of H. R. 5936, as amended.

CHANGES IN EXISTING LAW

In compliance with subsection 4 of rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill are shown as follows (existing law proposed to be omitted is enclosed in black brackets; new matter is printed in italics; existing law in which no change is proposed is shown in roman):

SECTION 217 (e) OF THE SOCIAL SECURITY ACT

(e) (1) For purposes of determining entitlement to and the amount of any monthly benefit or lump-sum death payment payable under this title on the basis of the wages and self-employment income of any veteran (as defined in paragraph (4)), such veteran shall be deemed to have been paid wages (in addition to the wages, if any, actually paid to him) of $160 in each month during any part of which he served in the active military or naval service of the United States on or after July 25, 1947, and prior to [July 1, 1955] *April 1, 1956*. This subsection shall not be applicable in the case of any monthly benefit or lump-sum death payment if—

(A) a larger such benefit or payment, as the case may be, would be payable without its application; or

(B) a benefit (other than a benefit payable in a lump sum unless it is a commutation of, or a substitute for, periodic payments) which is based, in whole or in part, upon the active military or naval service of such veteran on or after July 25, 1947, and prior to [July 1, 1955] *April 1, 1956*, is determined by any agency or wholly owned instrumentality of the United States (other than the Veterans' Administration) to be payable by it under any other law of the United States or under a system established by such agency or instrumentality.

The provisions of clause (B) shall not apply in the case of any monthly benefit or lump-sum death payment under this title if its application would reduce by $0.50 or less the primary insurance amount (as computed under section 215 prior to any recomputation thereof pursuant to subsection (f) of such section) of the individual on whose wages and self-employment income such benefit or payment is based.

(2) Upon application for benefits or a lump-sum death payment on the basis of the wages and self-employment income of any veteran, the Federal Security Administrator shall make a decision without regard to clause (B) of paragraph (1) of this subsection unless he has been notified by some other agency or instrumentality of the United States that, on the basis of the military or naval service of such veteran on or after July 25, 1947, and prior to [July 1, 1955] *April 1, 1956*, a benefit described in clause (B) of paragraph (1) has been determined by such agency or instrumentality to be payable by it. If he has not been so notified, the Federal Security Administrator shall then ascertain whether some other agency or wholly owned instrumentality of the United States has decided that a benefit described in clause (B) of paragraph (1) is payable by it. If any such agency or instrumentality has decided, or thereafter decides, that such a benefit is payable by it, it shall so notify the Federal Security Administrator, and the Administrator shall certify no further benefits for payment or shall recompute the amount of any fruther benefits payable, as may be required by paragraph (1) of this subsection.

(3) Any agency or wholly owned instrumentality of the United States which is authorized by any law of the United States to pay benefits, or has a system of

benefits which are based, in whole or in part, on military or naval service on or after July 25, 1947, and prior to [July 1, 1955] *April 1, 1956*, shall, at the request of the Federal Security Administrator, certify to him, with respect to any veteran, such information as the Administrator deems necessary to carry out his functions under paragraph (2) of this subsection.

(4) For the purposes of this subsection, the term "veteran" means any individual who served in the active military or naval service of the United States at any time on or after July 25, 1947, and prior to [July 1, 1955] *April 1, 1956*, and who, if discharged or released therefrom, was so discharged or released under conditions other than dishonorable after active service of ninety days or more or by reason of a disability or injury incurred or aggravated in service in line of duty; but such term shall not include any individual who died while in the active military or naval service of the United States if his death was inflicted (other than by an enemy of the United States) as lawful punishment for a military or naval offense.

LAST SENTENCE OF SECTION 202 (i) OF THE SOCIAL SECURITY ACT

In the case of any individual who died outside the forty-eight States and the District of Columbia after December 1953 and before [July 1955] *April 1956*, whose death occurred while he was in the active military or naval service of the United States, and who is returned to any of such States, the District of Columbia, Alaska, Hawaii, Puerto Rico, or the Virgin Islands for interment or reinterment, the provisions of the preceding sentence shall not prevent payment to any person under the second sentence of this subsection if application for a lump-sum death payment with respect to such deceased individual is filed by or on behalf of such person (whether or not legally competent) prior to the expiration of two years after the date of such interment or reinterment.

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Calendar No. 1159

84TH CONGRESS, 1st Session | SENATE | REPORT No. 1147

ACT TO ASSIST STATES IN COLLECTING SALES AND USE TAXES ON CIGARETTES

JULY 26 1955.—Ordered to be printed

Mr. BYRD, from the Committee on Finance, submitted the following

REPORT

[To accompany H. R. 6886]

The Committee on Finance, to whom was referred the bill (H. R. 6886) to amend the act of October 19, 1949, entitled "An act to assist States in collecting sales and use taxes on cigarettes," having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

By virtue of this act, the Committee on Finance accepts the report of the Committee on Ways and Means, which is as follows:

ACT OF OCTOBER 19, 1949

The act of October 19, 1949 (title 15, U. S. C., secs. 375–377), provided that persons who sell or dispose of cigarettes in interstate commerce to a person other than a distributor licensed by or located in a State taxing the sale or use of cigarettes must "forward to" the tobacco tax administrator of the receiving State monthly reports setting forth the names and addresses of the persons to whom shipments were made and the brand and quantity of cigarettes so shipped. The failure of the seller or disposer to comply with this act subjected him to a fine of $1,000 or imprisonment for not more than 6 months, or both.

The act of October 19, 1949, was enacted for three major reasons:

(1) The large and increasing loss of revenue to the States caused by the evasion of sales and use taxes on cigarettes shipped in interstate commerce to consumers;

(2) The discrimination caused by this evasion against sellers of cigarettes in States having a higher tax than the tax of the seller States; and

(3) The fact that this evasion was accomplished through the use of the United States mail.

1953 AMENDMENTS

The act of August 15, 1953, amended the original act to require the actual filing of the reports of cigarette sales to such nondistributors with the tobacco tax administrator of the receiving State instead of merely forwarding such reports to that official. The purpose of that amendment was to place the Federal venue, in case of violation of the act, in the district in which the State tobacco tax administrator of the receiving State has his office, and not in the district from which the cigarettes are shipped.

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CHANGES MADE BY BILL

This bill makes four important changes in the 1949 act as amended. The first redefines the term "State" to include the District of Columbia, Alaska, Hawaii, and the Commonwealth of Puerto Rico. This extends the coverage of the act to shipments of cigarettes to consumers in these areas. This change is contained in the first section of the act, as amended, by the bill.

The second major change made by this bill is contained in section 2 (a) of the act as amended by the bill. Existing law only requires that one who sells and causes cigarettes to be shipped in interstate commerce to other than a distributor must each month file memoranda or copies of invoices with the tobacco tax administrator of the State imposing the tax. The memoranda or invoice copies are to cover each shipment of cigarettes to a State made during the prior month. This requirement is retained and section 2 (a) of this bill adds a further requirement. The new provision requires anyone who advertises or offers cigarettes for sale and shipment in interstate commerce to a nondistributor in a taxing State to file his (i. e., the advertiser's) name, trade name, address, and places of business with the tobacco tax administrator of the State in which the advertisement or offer is disseminated. One who sells and causes cigarettes to be shipped in interstate commerce to a nondistributor in a taxing State also is required to file such information in the State into which the cigarettes are shipped. The bill changes the language in the present law to make certain that the law applies only to shipments of cigarettes into those States which tax their sale or use.

The third important change in existing law is contained in section 2 (b) of the act as amended by the bill. This section creates a presumption that once cigarettes are shipped or delivered for shipment into a State in which a statement has been filed, then such shipment is to be presumptive evidence (1) that there was a sale for profit by the shipper and (2) that the sale was to a person other than a distributor licensed by or located in the receiving State. This provision is intended to remove the very real difficulty of locating the buyer and obtaining his testimony as to violations of this act.

The fourth major change in present law is contained in section 4 of the bill. This section gives the United States district courts the power to restrain violations of this act. Formerly the district courts only had the power to punish violations after they occurred. It is felt that this amendment will greatly improve the enforcement of this act.

Minor changes effected by this bill are as follows:

(1) The broadening of the term "person" to include, but not to be limited to, various additional forms of business operation. This was done to avoid any technical dispute as to the scope of its meaning.

(2) Inserting and defining the term "distributor licensed by or located in such State." The effect of the mandatory provisions of section 2 of the act of October 19, 1949 (title 15, U. S. C., sec. 376), was to exempt shipments solely to distributors as distinguished from those who ship to consumers. This amendment makes it clear that the filing requirements do not apply to those who ship solely to wholesale or retail distributors in States which do not actually issue an authorization or license.

(3) Instead of using the term "disposing of" this bill inserts and defines the term "transfer for profit" and provides specifically that this includes the situation where the seller appoints the buyer as his agent. The purpose of this is to cover a possible evasion of the act by subterfuge. It is declaratory of existing law.

(4) In section 2 (a) (2) the word "calendar" is inserted before the word "month" where the latter word first appears.

Those provisions regarding the filing of memoranda or copies of invoices in the District of Columbia, Alaska, Hawaii, and Puerto Rico are to apply to shipments in the calendar months after the month in which the bill is enacted. The remainder of the provisions of this bill are to take effect 30 days after enactment.

The amendment by this bill would place no additional burden upon anyone shipping cigarettes to licensed distributors. It would require information to be supplied only by establishments which, without paying the tax, ship cigarettes across a State border to consumers in States imposing a tax on cigarettes and by this means evade the State tax on cigarettes.

CHANGES IN EXISTING LAW

In compliance with subsection (4) of rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

ACT OF OCTOBER 19, 1949

AN ACT To assist States in collecting sales and use taxes on cigarettes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, [That as used in this Act the term—

[(a) "person" means any individual, partnership, corporation, or association;

[(b) "disposing of" means any transfer for profit;

[(c) "cigarette" means any roll for smoking made wholly or in part of tobacco, irrespective of size or shape and whether or not such tobacco is flavored, adulterated, or mixed with any other ingredient, the wrapper or cover of which is made of paper or any other substance or material except tobacco;

[(d) "licensed distributor" means any person authorized by State statute or regulation to distribute cigarettes at wholesale or retail;

[(e) "use", in addition to its ordinary meaning, means the consumption, storage, handling, or disposal of cigarettes;

[(f) "tobacco tax administrator" means the State official duly authorized to administer the cigarette tax law of a State.

[SEC. 2. Any person selling or disposing of cigarettes in interstate commerce whereby such cigarettes are shipped to other than a distributor licensed by or located in a State taxing the sale or use of cigarettes shall, not later than the 10th day of each month, file with the tobacco tax administrator of the State into which such shipment is made, a memorandum or a copy of the invoice covering each and every such shipment of cigarettes made during the previous calendar month into said State; the memorandum or invoice in each case to include the name and address of the person to whom the shipment was made, the brand, and the quantity thereof.

[SEC. 3. Whoever violates the provisions of this Act shall be guilty of a misdemeanor and shall be fined not more than $1,000 or imprisoned not more than six months, or both.]

That for the purposes of this Act—

(1) The term "person" includes corporations, companies, associations, firms, partnerships, societies, and joint stock companies, as well as individuals.

(2) The term "cigarette" means any roll for smoking made wholly or in part of tobacco, irrespective of size or shape and whether or not such tobacco is flavored, adulterated, or mixed with any other ingredient, the wrapper or cover of which is made of paper or any other substance or material except tobacco.

(3) The term "distributor licensed by or located in such State" means—

(A) in the case of any State which by State statute or regulation authorizes the distribution of cigarettes at wholesale or retail, any person so authorized, or

(B) in the case of any other State, any person located in such State who distributes cigarettes at wholesale or retail;

but such term in no case includes a person who acquires cigarettes for purposes other than resale.

(4) The term "use", in addition to its ordinary meaning, means the consumption, storage, handling, or disposal of cigarettes.

(5) The term "tobacco tax administrator" means the State official duly authorized to administer the cigarette tax law of a State.

(6) The term "State" includes the District of Columbia, Alaska, Hawaii, and the Commonwealth of Puerto Rico.

(7) The term "transfers for profit" means any transfer for profit or other disposition for profit, including any transfer or disposition by an agent to his principal in connection with which the agent receives anything of value.

SEC. 2. (a) Any person who sells or transfers for profit cigarettes in interstate commerce, whereby such cigarettes are shipped into a State taxing the sale or use of cigarettes, to other than a distributor licensed by or located in such State, or who advertises or offers cigarettes for such a sale or transfer and shipment, shall—

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(1) first file with the tobacco tax administrator of the State into which such shipment is made or in which such advertisement or offer is disseminated a statement setting forth his name and trade name (if any), and the address of his principal place of business and of any other place of business; and

(2) not later than the 10th day of each calendar month, file with the tobacco tax administrator of the State into which such shipment is made, a memorandum or a copy of the invoice covering each and every shipment of cigarettes made during the previous calendar month into such State; the memorandum or invoice in each case to include the name and address of the person to whom the shipment was made, the brand, and the quantity thereof.

(b) The fact that any person ships or delivers for shipment any cigarettes shall, if such shipment is into a State in which such person has filed a statement with the tobacco tax administrator under subsection (a) (1) of this section, be presumptive evidence (1) that such cigarettes were sold, or transferred for profit, by such person, and (2) that such sale or transfer was to other than a distributor licensed by or located in such State.

SEC. 3. Whoever violates any provision of this Act shall be guilty of a misdemeanor and shall be fined not more than $1,000, or imprisoned not more than 6 months, or both.

SEC. 4. The United States district courts shall have jurisdiction to prevent and restrain violations of this Act.

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Calendar No. 1160

84TH CONGRESS, 1st Session | SENATE | REPORT No. 1148

INCOME TAX EXEMPTION FOR CERTAIN DEPENDENTS IN THE REPUBLIC OF THE PHILIPPINES

JULY 26, 1955.—Ordered to be printed

Mr. BYRD, from the Committee on Finance, submitted the following

REPORT

[To accompany H. R. 7148]

The Committee on Finance, to whom was referred the bill (H. R. 7148) to amend the Internal Revenue Codes so as to provide a personal exemption with respect to certain dependents in the Republic of the Philippines, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

By virtue of this act, the Committee on Finance accepts the report of the Committee on Ways and Means, which is as follows:

PURPOSE

This bill amends both the Internal Revenue Code of 1939 and the Internal Revenue Code of 1954 to provide that certain children (including adopted children) of members of the Armed Forces may be claimed as dependents by the taxpayer.

GENERAL STATEMENT

Under section 25 (b) (3) of the 1939 code no exemption for a dependent was allowed if the dependent was a citizen or subject of a foreign country unless he was a resident of the United States or a contiguous country. The 1954 code modified this restriction by providing in section 152 (b) that any child of the taxpayer born to him, or legally adopted by him, in the Philippine Islands before July 5, 1946, may be claimed as a dependent if the child is a resident of the Republic of the Philippines, and if the taxpayer was a member of the Armed Forces of the United States at the time of the birth or adoption of the child.

This bill permits a taxpayer to claim as a dependent under the 1939 code any child born to him, or legally adopted by him, in the Philippine Islands if the child is a resident of the Philippines for the taxable year for which the deduction is claimed and the taxpayer was a member of the Armed Forces of the United States at the time of the birth or adoption of the child. This provision applies to all taxable years beginning after December 31, 1946, to which the Internal Revenue Code of 1939 applies. However, the bill does not open up years with respect to which the statute of limitations has run.

The provision in the 1954 code relating to dependents who are residents of the Republic of the Philippines is also amended by permitting the taxpayer to claim as a dependent a child born to him or legally adopted by him prior to January 1,

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1956, rather than July 5, 1946. This amendment applies with respect to taxable years beginning after December 31, 1953, and ending after August 16, 1954.

This provision is designed primarily to be of aid to Filipinos who as members of the United States Armed Forces during World War II became citizens of the United States but whose families continue to reside in the Philippine Islands and have not become United States citizens.

CHANGES IN EXISTING LAW

In compliance with subsection (4) of rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets; new matter is printed in italics, existing law in which no change is proposed is shown in roman):

SECTION 25 OF THE INTERNAL REVENUE CODE OF 1939

SEC. 25. CREDITS OF INDIVIDUAL AGAINST NET INCOME.

(a) CREDITS FOR NORMAL TAX ONLY.— * * *

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(b) CREDITS FOR BOTH NORMAL TAX AND SURTAX.—

(1) CREDITS.— * * *

* * * * * * *

(3) DEFINITION OF DEPENDENT.—As used in this chapter the term "dependent" means any of the following persons over half of whose support, for the calendar year in which the taxable year of the taxpayer begins, was received from the taxpayer:

(A) a son or daughter of the taxpayer, or a descendant of either,
(B) a stepson or stepdaughter of the taxpayer,
(C) a brother, sister, stepbrother, or stepsister of the taxpayer,
(D) the father or mother of the taxpayer, or an ancestor of either,
(E) a stepfather or stepmother of the taxpayer,
(F) a son or daughter of a brother or sister of the taxpayer,
(G) a brother or sister of the father or mother of the taxpayer,
(H) a son-in-law, daughter-in-law, father-in-law, mother-in-law, brother-in-law, or sister-in-law of the taxpayer.

As used in this paragraph, the terms "brother" and "sister" include a brother or sister by the half-blood. For the purposes of determining whether any of the foregoing relationships exist (1) a legally adopted child of a person, or (2) a child for which petition for adoption was filed by a person in the appropriate court and denied because of mental incapacity of surviving natural parent to agree to such adoption, shall be considered a child of such person by blood. The term "dependent" does not include any individual who is a citizen or subject of a foreign country unless such individual is a resident of the United States or of a country contiguous to the United States. *For taxable years beginning after December 31, 1946, the preceding sentence shall not exclude from the definition of "dependent" any child of the taxpayer born to him, or legally adopted by him, in the Philippine Islands, if (i) the child is a resident of the Republic of the Philippines, and (ii) the taxpayer was a member of the Armed Forces of the United States at the time the child was born to him or legally adopted by him.* A payment to a wife which is includible under section 22 (k) or section 171 in the gross income of such wife shall not be considered a payment by her husband for the support of any dependent.

SECTION 152 OF THE INTERNAL REVENUE CODE OF 1954

SEC. 152. DEPENDENT DEFINED.

(a) GENERAL DEFINITION.— * * *

(b) RULES RELATING TO GENERAL DEFINITION.— * * *

(1) * * *

* * * * * * *

(3) The term "dependent" does not include any individual who is not a citizen of the United States unless such individual is a resident of the United States, of a country contiguous to the United States, of the Canal Zone, or of the Republic of Panama. The preceding sentence shall not exclude from the definition of "dependent" any child of the taxpayer born to him, or legally adopted by him, in the Philippine Islands before [July 5, 1946] *January 1, 1956*, if the child is a resident of the Republic of the Philippines, and if the taxpayer was a member of the Armed Forces of the United States at the time the child was born to him or legally adopted by him.

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Calendar No. 1161

84TH CONGRESS, 1st Session | SENATE | REPORT No. 1149

EXTENDING FOR 1 YEAR THE APPLICATION OF SECTION 108 (B) OF THE INTERNAL REVENUE CODE OF 1954 (RELATING TO INCOME OF A RAILROAD CORPORATION FROM DISCHARGE OF INDEBTEDNESS)

JULY 26, 1955.—Ordered to be printed

Mr. BYRD, from the Committee on Finance, submitted the following

REPORT

[To accompany H. R. 6887]

The Committee on Finance, to whom was referred the bill (H. R. 6887) to extend for 1 year the application of section 108 (b) of the Internal Revenue Code of 1954 (relating to income of a railroad corporation from discharge of indebtedness), having considered the same, report thereon with amendments and recommend that the bill, as amended, do pass.

SECTION 1. EXTENSION FOR 1 YEAR OF THE APPLICATION OF SECTION 108 (B) OF THE INTERNAL REVENUE CODE OF 1954

Section 1 of this bill extends for 1 year the expiration date contained in section 108 (b) of the Internal Revenue Code of 1954. Under existing law, the provisions of section 108 (b) do not apply to any discharge of indebtedness occurring in a taxable year beginning after December 31, 1955. This latter date is extended to December 31, 1956, under the bill.

Under section 108 (b) of the 1954 code, income from the discharge of indebtedness of a railroad corporation is excluded from gross income if the discharge is effected pursuant to a court order issued in a receivership proceeding or in a proceeding under section 77 of the Bankruptcy Act. In such cases, the basis of the property of the railroad corporation is not reduced by reason of the exclusion from gross income of the amount of income attributable to the discharge of indebtedness.

A provision corresponding to section 108 (b) was contained in section 22 (b) (10) of the 1939 code. This provision was first added to the Internal Revenue Code by the Revenue Act of 1942 effective for taxable years beginning after December 31, 1939, and before January 1, 1946. Its application was extended in subsequent revenue acts

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to December 31, 1954, and was further extended to December 31, 1955, by the 1954 code. Because certain railroad receivership proceedings have not yet been concluded and no court order has been issued in these cases, the bill extends the applicability of the provision so that it will also apply to any discharge of indebtedness occurring in a taxable year beginning after December 31, 1955, and before January 1, 1957.

It is estimated that the revenue effect of this bill will be negligible.

Your committee has made no change in this provision of the bill.

SECTION 2. DEDUCTION UNDER THE FEDERAL ESTATE TAX OF CERTAIN STATE DEATH TAXES

Your committee has added another provision to this bill. Under present law, a deduction from the Federal estate tax is granted for bequests to charity. Under the provision added by your committee, a deduction would also be granted for the amount of any estate, succession, legacy or inheritance tax imposed by a State upon the transfer by the decedent for public, charitable, or religious uses as described in section 2055.

The deduction for charitable bequests allowed by section 2055 of the 1954 code for bequests to charity is measured by the amount the charity actually receives and not the amount of the bequest. For example, if a State imposes a tax on the charitable bequest and the State tax must be paid from the charitable bequest, the Federal estate tax deduction would be limited to the amount of the bequest less the State tax paid from the bequest, and the Federal estate tax would be increased by the corresponding increase in the taxable estate of the decedent. If the additional Federal estate tax thus arising must also be paid out of the charitable bequest, the charitable deduction will, in turn, be reduced and the estate tax correspondingly increased. By this pyramiding of tax on tax, the Federal estate tax can be increased by much more than the State tax on the bequest and the combination of these two taxes can result in the dissipation of a large part of the bequest that the testator intended to be used for a charitable purpose.

To prevent the charitable purpose of the testator from thus being frustrated and to carry out the national purpose of not subjecting charitable bequests to the estate tax, your committee has added a provision that will grant a deduction for Federal estate tax purposes for the amount of any estate, succession, legacy, or inheritance tax imposed by a State upon a transfer by the decedent for public, charitable, or religious uses as described in section 2055 of the 1954 code. Thus, the estate will receive the same deduction whether or not a State tax is imposed upon a bequest, legacy, devise, or transfer that is deductible under any paragraph of section 2055 (a) of the 1954 code.

The deduction granted under the provision added by your committee will be disregarded in computing the credit for State death taxes under section 2011 of the 1954 code.

The amendment to section 2053 of the 1954 code made by your committee will apply with respect to the estate of decedents in any case in which the last date prescribed by law for filing the Federal estate tax return is on or after April 1, 1955.

CHANGES IN EXISTING LAW

In compliance with subsection 4 of rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill are shown as follows (existing law proposed to be omitted is enclosed in black brackets; new matter is printed in italics; existing law in which no change is proposed is shown in roman):

SECTION 108 (B) OF THE INTERNAL REVENUE CODE OF 1954

SEC. 108. INCOME FROM DISCHARGE OF INDEBTEDNESS.

(a) SPECIAL RULE OF EXCLUSIONS.— * * *

(b) RAILROAD CORPORATIONS.—No amount shall be included in gross income by reason of the discharge, cancellation, or modification, in whole or in part, within the taxable year, of any indebtedness of a railroad corporation, as defined in section 77 (m) of the Bankruptcy Act (11 U. S. C. 205 (m)), if such discharge, cancellation, or modification is effected pursuant to an order of a court in a receivership proceeding or in a proceeding under section 77 of the Bankruptcy Act. In such cases, the amount of any income of the taxpayer attributable to any unamortized premium (computed as of the first day of the taxable year in which such discharge occurred) with respect to such indebtedness shall not be included in gross income, and the amount of the deduction attributable to any unamortized discount (computed as of the first day of the taxable year in which such discharge occurred) with respect to such indebtedness shall not be allowed as a deduction. Subsection (a) of this section shall not apply with respect to any discharge of indebtedness to which this subsection applies. This subsection shall not apply to any discharge occurring in a taxable year beginning after December 31, [1955] *1956*.

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SEC. 2053. EXPENSES, INDEBTENESS, AND TAXES.

* * * * * * *

(d) CERTAIN STATE DEATH TAXES.—Notwithstanding any other provision of this chapter, for purposes of the tax imposed by section 2001, the value of the taxable estate shall be determined by deducting from the value of the gross estate the amount of any estate, succession, legacy, or inheritance tax imposed by a State upon a transfer by the decedent for public, charitable, or religious uses as described in section 2055. Any tax deducted under this subsection shall be disregarded in computing the credit for State death taxes under section 2011.

[(d)] *(e)* Marital Rights.— * * *

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Calendar No. 1162

84TH CONGRESS, 1st Session } SENATE { REPORT No. 1150

PERMITTING THE MINING, DEVELOPMENT, AND UTILIZATION OF THE MINERAL RESOURCES OF THE PUBLIC LANDS WITHDRAWN OR RESERVED FOR POWER DEVELOPMENT

JULY 26, 1955.—Ordered to be printed

Mr. O'MAHONEY (for Mr. MURRAY), from the Committee on Interior and Insular Affairs, submitted the following

REPORT

[To accompany H. R. 100]

The Senate Committee on Interior and Insular Affairs, to whom was referred the bill, H. R. 100, to permit the mining, development, and utilization of the mineral resources of all public lands withdrawn or reserved for power development, and for other purposes, having considered the same, report favorably thereon with the following amendments, and with the recommendation that the bill, as amended, do pass.

The amendments, which are numbered 1 to 6 consecutively for easy reference are as follows:

1. Lines 5 and 6, page 1, insert the word "heretofore" between "States" and "Now".

2. Line 5, page 1, insert the letter "(a)" after "SEC. 2.".

3. Line 7, page 1, strike out "by statutory rights".

4. Line 7, page 2 after "second session)" strike out the period and insert a colon and the following:

And provided further, That nothing contained herein shall be construed to open for the purposes described in this section any lands (1) which are included in any project operating or being constructed under a license or permit issued under the Federal Power Act or other Act of Congress, or (2) which are under examination and survey by a prospective licensee of the Federal Power Commission, if such prospective licensee holds an uncanceled preliminary permit issued under the Federal Power Act authorizing him to conduct such examination and survey with respect to such lands and such permit has not been renewed in the case of such prospective licensee more than once.

(b) The locator of a placer claim under this Act, however, shall conduct no mining operations for a period of 60 days after the filing of a notice of location pursuant to section 4 of this Act. If the Secretary of the Interior, within 60 days from the filing of the notice of location, notifies the locator by registered mail of the Secretary's intention to hold a public hearing to determine whether placer mining operations would substantially interfere with other uses of the land

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included within the placer claim, mining operations on that claim shall be further suspended until the Secretary has held the hearing and has issued an appropriate order. The order issued by the Secretary of the Interior shall provide for one of the following: (1) a complete prohibition of placer mining; (2) a permission to engage in placer mining upon the condition that the locator shall, following placer operations, restore the surface of the claim to the condition in which it was immediately prior to those operations; or (3) a general permission to engage in placer mining. No order by the Secretary with respect to such operations shall be valid unless a certified copy is filed in the same State or county office in which the locator's notice of location has been filed in compliance with the United States mining laws.

The Secretary shall establish such rules and regulations as he deems desirable concerning bonds and deposits with respect to the restoration of lands to their condition prior to placer mining operations. Moneys received from any bond or deposit shall be used for the restoration of the surface of the claim involved and any money received in excess of the amount needed for the restoration of the surface of that claim shall be refunded.

(c) Nothing in this Act shall affect the validity of withdrawals or reservations for purposes other than power development.

5. Line 13, page 3, after word "reservation" strike out the period and insert a colon and the following:

Provided That nothing in this Act shall be construed to limit or restrict the rights of the owner or owners of any mining claim who are diligently working to make a discovery of valuable minerals at the time any future withdrawal or reservation for power development is made.

6. Starting with line 20, page 3, strike out all of section 7.

EXPLANATION OF THE BILL

H. R. 100, as amended, would open an estimated 7 million acres of public lands in the West for mineral development under the general mining laws, subject to conditions and procedures set out in the bill.

Citation af act

Section 1 declares that this act may be cited as the "Mining Claims Rights Restoration Act of 1955."

Entry permitted and conditions thereof

Section 2 operates to open to entry under Federal mining laws public lands presently withdrawn or reserved for power development or power sites; public lands so withdrawn and reserved in the future would be subject also to entry under the conditions provided for in the act.

Purposes for which entry could be made include location and patent of mining claims, and for mining, development, beneficiation, removal, and utilization of the mineral resources of such lands—all to be carried out under existing laws regulating such activities.

This section limits the effect of entry in four respects:

First, by declaring that notwithstanding entry, all power rights to such lands shall be retained by the United States; and

Second, by making locations made under this act within the revested Oregon & California Railroad and reconveyed Coos Bay Wagon grant lands subject to the provisions of the act of April 8, 1940 (62 Stat. 162). The 1948 act reserves timber on mining claims located on lands within such areas, except for such timber as may be necessary in the development or operation of his mine, until such timber is disposed of by the United States; and

Third, by not opening for entry lands which are included in any project being operated or being constructed under a license or permit

granted under authority of any act of Congress, or under an uncanceled preliminary permit for examination and survey; and

Fourth, gives to the Secretary of the Interior authority to hold public hearings to determine whether placer mining operations would be detrimental to other uses of the lands involved, and to require at his option, locators and operators of placer-mine operations to restore such lands to their former condition when the mining operation has been completed.

Subsection (c) of section 3 provides that the act shall not affect the validity of withdrawals or reservations for purposes other than power development so as to protect the integrity of other withdrawals where there has been a duality of withdrawals on certain particular lands.

Protection of Federal interest

Section 3 would operate to protect the interest of the United States on two counts.

This section declares that prospecting and exploration for and development and utilization of mineral resources as authorized in this act shall be at the financial risk of the party or parties undertaking such work.

The proviso in this section is in the nature of a "hold harmless" clause providing that the United States shall not be responsible or held liable or incur any liability for the damage, destruction, or loss of any mining claim, facility, and so forth, resulting from the actual use of such lands for power development by or under the authority of the United States, except where such damage, destruction, or loss results from the negligence of the United States, its permittees, and licensees.

Recording, reporting provisions

Section 4 establishes recording and assessment reporting requirements for unpatented mining claim locations made prior to the effective date of this act and recording and assessment reporting requirements for locations which might be made after the date of the act.

In adopting the following language—

> The owner of any unpatented mining claim located on land described in section 2 * * * as to any or all locations heretofore made—

it should be understood that this language refers to claims based on valid entry; for example, where a locator has made entry prior to the withdrawal or reservation for power-site purposes of the lands entered.

In short, the language of H. R. 100 as reported by the committee does not validate locations or claims based on entry after public lands have been withdrawn or reserved for power development and prior to restoration.

Section 4 would require owners of any unpatented mining claim to file for record in the United States district land office of the land district in which the claim is situated a copy of a notice of location of the claim within 1 year after the effective date of this act as to any or all locations made prior to the effective date; for locations made after the effective date of this act such filing for record must be made within 60 days of location. All claimants would be required to file for record within 60 days after the expiration of any annual assessment year a statement

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as to the assessment work done or improvements made during the previous assessment year.

Protection of existing valid claims

Section 5 makes clear the intent that rights arising from any valid claim located prior to the date of withdrawal or reservation are not limited or restricted in any way by this act, and further protects the rights of locators of mining claims on public lands which may in the future be withdrawn or reserved for power-development purposes.

Requirement of conforming use

Section 6 constitutes a prohibition against use of any facility or conduct of any activity for any purpose other than location or patent of mining claims for mining, development, beneficiation, removal, and utilization of the mineral resources of such lands.

Committee amendments

Amendments 1, 2, and 3 are perfecting in their nature.

Amendment 4, adding the first proviso, was motivated by a desire to throw every possible safeguard around the rights and interests of those holding valid operational, construction, and preliminary licenses or permits authorized by law on lands previously withdrawn for power purposes or power sites. This amendment was drawn in painstaking cooperation with the Federal Power Commission.

Subsection (b) of section 2, which follows the above-mentioned proviso, was suggested by the Department of the Interior and the Committee concurs in the opinion that this language should be included in H. R. 100 so as to avoid any possible conflict with H. R. 5891 (S. 1713), the so-called multiple-use land bill enacted by this Congress.

Amendment 4 is perfecting in its nature and in addition protects the rights of mining claim owners who might be threatened by future withdrawals or reservations for power-development purposes.

Striking all of section 7 was adopted only after long and serious consideration. It would seem inevitable that its inclusion would result in little or no development of mineral resources on unsurveyed lands, which would be against the public interest, particularly in view of reference hereafter made to the fact that many of the lands herein under consideration contain deposits of badly needed fissionable materials.

In striking out section 7 the committee firmly urges that as soon as practical proposed legislation should be introduced which provides that where a State loses a section of land in place because of mineral locations that its in lieu selection rights shall extend to mineral lands rather than to lands which insofar as anybody knows have no mineral value.

The committee further calls attention to the fact that one of the pressing needs in relation to development of the mineral resources of this Nation, and to avoid confusion in the administration of the public domain, is a complete survey of all public lands remaining unsurveyed.

Further committee comment

It is to be expressly understood that adoption of the language in section 4 is not to be construed as setting a precedent for the piecemeal amendment or change of the general mining laws as they relate to the overall public domain, with particular reference to the requirement for filing a copy of location notices with the United States district

land office, or any other Federal agency, which is a departure from settled policy that is to be frowned upon and avoided except in the case of the specific lands such as are covered by this bill. The lands herein involved, having at some time or another been withdrawn for a specific purpose, must of necessity be restored or opened to entry in a manner best calculated to insure wise and orderly development of national security and the economic health of all the people of the United States.

Further, the committee reports this legislation with the understanding that development of resources of leasable minerals, including oil and gas, on the lands affected by this act, would continue under present laws and regulations and that the procedure provided under present laws and regulations is not modified by the terms of H. R. 100.

The committee also gave careful consideration to Senate bills, S. 1149 and S. 1502, which dealt with the same general subject and had the benefit of oral testimony and written reports from the interested governmental agencies, and the bill, as amended, for their approval.

Attention is called to the fact that large deposits of uranium are believed to exist in several areas set aside for power sites, and that this legislation, having as its purpose opening areas now withdrawn for power and power-site purposes, would permit location and patenting of claims for uranium deposits.

In a report dated May 11, 1954, addressed to this committee by the Atomic Energy Commission, on predecessor power-site-withdrawal legislation in the 83d Congress, the Atomic Energy Commission declared in part:

* * * The domestic uranium procurement program of the Atomic Energy Commission depends to a great extent on the discovery and development work of private individuals operating under the mining laws. As the proposed act would open up new areas for private development of uranium deposits, we believe it would be in aid of our program of acquiring available uranium * * *.

Reports of Federal Power Commission and Department of the Interior follow:

FEDERAL POWER COMMISSION,
Washington, April 22, 1955.

Hon. JAMES E. MURRAY,
Chairman, Committee on Interior and Insular Affairs,
United States Senate, Washington, D. C.

DEAR MR. CHAIRMAN: In response to your letter of April 6, 1955, requesting the views of the Federal Power Commission with respect to a possible amendment of H. R. 100, the Commission would favor the insertion of the following on page 2, line 7 of the bill:

And provided further, That nothing contained herein shall be construed to open for the purposes described in this section any lands (1) which are included in any project operating or being constructed under a license or permit issued under the Federal Power Act or other act of Congress, or (2) which are under examination and survey by a prospective licensee of the Federal Power Commission, if such prospective licensee holds an uncancelled preliminary permit issued under the Federal Power Act authorizing him to conduct such examination and survey with respect to such lands and such permit has not been renewed in the case of such prospective licensee more than once.

The Commission would favor this amendment as it appears to offer complete protection to those lands of the United States within power projects operated under license or included within an outstanding license or permit. Passage of the bill with this amendment is recommended.

Sincerely yours,

JEROME K. KUYKENDALL, *Chairman.*

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DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D. C., July 18, 1955.

Hon. JAMES E. MURRAY,
Chairman, Committee on Interior and Insular Affairs,
United States Senate, Washington, D. C.

MY DEAR SENATOR MURRAY: There is now pending before your committee H. R. 100, to permit the mining, development, and utilization of the mineral resources of all public lands withdrawn or reserved for power development, and for other purposes. All references in our report are to the committee print (dated April 22, 1955) of the bill, which includes an amendment recommended by the subcommittee staff.

We recommend that H. R. 100 be enacted, if it is amended as suggested below.

This bill would open lands withdrawn or reserved for power development or power sites to entry for location and patent of mining claims. Use of the land for power development and other purposes would be protected by various specific provisions which reserve power rights to the United States, relieve the United States of liability for damage to mining property because of the later use of the lands for power development, limit the use of the surface of an unpatented mining claim to mining purposes only, and require the filing for recordation in the United States district land office of mining claims located under the bill and of annual assessment work statements.

The purpose of the bill is, apparently, to remove the prohibition, which at present exists, against mining locations under the general mining laws (30 U. S. C., sec. 21, et seq.) where the lands involved are affected by a power site withdrawal or reservation. Where lands subject to such a withdrawal or reservation are also affected by other kinds of withdrawals or reservations, the applicability of the general mining laws to such lands would, if H. R. 100 were enacted, depend, we assume, upon the effect of these other types of withdrawals. Perhaps, it would be desirable to state clearly in H. R. 100 that the opening to mining location of lands within power-site withdrawals would not open to such locations lands subject to power-site withdrawals within areas like national parks or monuments, which would not otherwise be subject to the mining laws.

Under existing law, lands withdrawn or reserved for power development or power sites may be restored to entry and location under the mining laws whenever their value for power purposes would not be injured or destroyed as a result of such restoration (sec. 24 of the act of June 10, 1920, as amended, 16 U. S. C., sec. 818), and, under existing procedure, the Federal Power Commission, as well as this Department, considers each proposed restoration individually on its own merits. The bill would eliminate the necessity for individual consideration of the facts warranting restoration in each particular case.

Generally, we fully agree with the need for encouraging mineral development in public-land areas not now subject to mining location, since the discovery of new sources of mineral wealth on the public domain is urgent to the national economy.

The various provisions in the bill which are designed to protect these lands for other uses appear well justified. Power-site lands are often quite valuable for other surface uses. For example, many of the lands withdrawn for power-site purposes are timbered lands situated in national forests. The timber on these lands usually constitutes an integral part of large timber tracts which should be managed on a sustained-yield basis. The bill would reserve the timber within the revested Oregon & California Railroad and reconveyed Coos Bay Wagon Road grant lands by making mineral locations under this act in that area also subject to the act of April 8, 1948 (62 Stat. 162).

Normally, the filing of unpatented mining claims in the United States district land office of the land district in which the claim is situated would seem unnecessary, if S. 1713, a bill "to amend the act of July 31, 1947 (61 Stat. 681) and the mining laws to provide for the multiple use of the surface of the same tracts of the public lands and for other purposes," now under consideration by the Congress, should be enacted. However, it is particularly important that the Secretary of the Interior be advised immediately when placer claims are initiated since the most serious conflict between mining activities and other land uses occurs when placer mining and dredging operations are involved. The mining of monazite sands by dredging in flat meadow areas has recently caused serious problems in the West because such operations interfere with recreational, grazing, and scenic values of these lands. The Secretary should have the authority in the case of placer-mining claims to hold public hearings to determine whether placer-mining operations in the areas would be detrimental to other uses of the land. When

necessary, he should be able to require the locators of placer-mining claims to execute bonds or undertakings to the United States or to make deposits of money to assure restoration of the lands in their former condition. If the locators or their sureties fail to restore the lands, the deposits or bonds should be forfeited and the receipts obtained made immediately available for restoration of the lands by the Secretary. Any excess funds, of course should be returned. If these provisions along these lines were added to H. R. 100, we believe that most of the alleged abuses of the existing mining laws, as they may affect lands withdrawn for power-site purposes, would be met.

We assume that, under section 4 of the bill, failure to record location would render the claim invalid. We also, assume, that, in accordance with ordinary practice, failure to record assessment work would not render a claim invalid, but would merely open it to relocation.

Section 7 of the bill provides that no mining claim located pursuant to the bill's provisions upon surveyed or unsurveyed lands would create any rights in the locator as against the State after the termination of the withdrawal or reservation, if title to the lands on which the location is made would otherwise vest in a State for the support of its schools, and that the existence of such a mining claim would not prevent the vesting of the title in the State. We believe that this section should be deleted from H. R. 100. Otherwise, there will be a cloud on every mining claim which is located on unsurveyed land within a power-site withdrawal. At present, the holder of a mining claim located on unsurveyed land which, upon survey, proves to be within a school section reserved to a State possesses rights superior to those of the State. Section 7 of this bill would, consequently, put the State in a better position with respect to unsurveyed lands which are withdrawn or reserved for power-site purposes than with respect to other unsurveyed lands. If the provisions of this section should become law, no one could make a mining location on unsurveyed land withdrawn for power-site purposes with any assurance that the land on which he had made that location would not be included within a reserved school section; if it were so included, he would, upon revocation of the power-site withdrawal, lose his claim. We believe that any benefits to be derived by the States from the provisions of this section would be overbalanced by the resulting disadvantages.

For the reasons given above, we suggest, therefore, that H. R. 100 be amended as follows:

(1) At page 1, line 7, strike out the words "by statutory rights."

(2) On page 1, line 5, insert the letter "(a)" after "SEC. 2.", and on page 2, after line 19, add the following language:

"(b) The locator of a placer claim under this Act, however, shall conduct no mining operations for a period of 60 days after the filing of a notice of location pursuant to section 4 of this Act. If the Secretary of the Interior, within 60 days from the filing of the notice of location, notifies the locator by registered mail of the Secretary's intention to hold a public hearing to determine whether placer mining operations would substantially interfere with other uses of the land included within the placer claim, mining operations on that claim shall be further suspended until the Secretary has held the hearing and has issued an appropriate order. The order issued by the Secretary of the Interior shall provide for one of the following: (1) a complete prohibition of placer mining; (2) a permission to engage in placer mining upon the condition that the locator shall, following placer operations, restore the surface of the claim to the condition in which it was immediately prior to those operations; or (3) a general permission to engage in placer mining. No order by the Secretary with respect to such operations shall be valid unless a certified copy is filed in the same State or county office in which the locator's notice of location has been filed in compliance with the United States mining laws.

"The Secretary shall establish such rules and regulations as he deems desirable concerning bonds and deposits with respect to the restoration of lands to their condition prior to placer mining operations. Moneys received from any bond or deposit shall be used for the restoration of the surface of the claim involved, and any money received in excess of the amount needed for the restoration of the surface of that claim shall be refunded.

"(c) Nothing in this Act shall affect the validity of withdrawals or reservations for purposes other than power development."

(3) At page 2, immediately after line 22, insert the following:

"Any mining claim which was located prior to the date of enactment of this Act shall not be deemed to be invalid by reason of its location on such land prior

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to the date of enactment of this Act, and, if otherwise valid, shall be so, subject to the provisions of this Act and to any intervening rights."

(4) Delete all of section 7, at page 4, lines 5–11, inclusive.

The Bureau of the Budget has advised that there is no objection to the submission of this report to your Committee.

Sincerely yours,

ORME LEWIS,
Assistant Secretary of the Interior.

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Calendar No. 1163

84TH CONGRESS, 1st Session | SENATE | REPORT No. 1151

AUTHORIZING THE CONVEYANCE OF CERTAIN LAND TO THE PECWAN UNION SCHOOL DISTRICT FOR USE AS THE SITE OF A SCHOOL

JULY 26, 1955.—Ordered to be printed

Mr. KUCHEL, from the Committee on Interior and Insular Affairs, submitted the following

REPORT

[To accompany H. R. 727]

The Committee on Interior and Insular Affairs, to whom was referred the bill (H. R. 727) to authorize the conveyance of certain land to the Pecwan Union School District for use as the site of a school, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

The committee adopts the language of the House report on H. R. 727, which follows:

EXPLANATION OF THE BILL

The purpose of H. R. 727, as amended, is to authorize and direct the Secretary of the Interior to convey 15 acres of land in the extension of the Hoopa Valley Reservation in California, from the United States Government and the Indians who have an interest therein, to the Pecwan Union School District for use as a school site. Mineral rights are reserved to the present owners of the land.

The urgency for this legislation is acute inasmuch as the school building was destroyed by floodwaters in January 1953. Last year the school sessions were held in an inadequate vacant building. During 1953–54 there were 40 pupils enrolled in the school. Of this number, 36 were of one-fourth or more Indian blood.

A majority of the Indians in the Hoopa extension have requested by petition that this conveyance be made so that a modern school building may be constructed thereon. At a school bond election held on May 21, 1954, the voters by a 40-to-1 majority authorized the district to issue bonds in the amount not to exceed $202,000 for construction of the new building.

The favorable report of the Department of the Interior follows:

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DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington 25, D. C., May 11, 1955.

Hon. CLAIR ENGLE,
Chairman, Committee on Interior and Insular Affairs,
House of Representatives, Washington 25, D. C.

MY DEAR MR. ENGLE: Your committee has requested a report on H. R. 727, a bill to authorize the conveyance of certain land to the Pecwan Union School District for use as the site of a school.

We recommend that the bill be enacted if amended as suggested below.

This bill authorizes the transfer of 15 acres of land in the extension of the Hoopa Valley Reservation in California to the Pecwan Union School District for use as a school site. Mineral rights are reserved to the present owners of the lands.

During the school year 1953–54 it is reported there were 40 pupils enrolled in the Pecwan Union School. Of this number 36 were of one-quarter or more degree of Indian blood. The Pecwan Union School building was destroyed by floodwaters from the Pecwan Creek in January 1953. Since that time classes have been held in a vacant building which is far from adequate for school purposes. The need for proper school facilities is critical and the school district officials are planning the construction of appropriate facilities upon transfer of title to the site described in this bill.

The lands were included within the "extended" boundaries of the Hoopa Valley Reservation by Executive order dated October 16, 1891. They were within the area subsequently reserved for the Indian villages of Wauteck and Cantep by departmental order of June 24, 1898. The lands in the extension area, however, are not under the jurisdiction of the Hoopa Valley Tribe according to the terms of its constitution, and a majority of Indians of the Hoopa extension have requested by petition that this transfer of lands be made so that a modern school plant may be constructed thereon.

Inasmuch as the lands do not belong to the Hoopa Indian Tribe, the bill should be amended by deleting on page 1, line 7, the words "Hoopa Indian Tribe," and by inserting in lieu thereof the words "Indians who have an interest therein.".

The Bureau of the Budget has advised us that there is no objection to the submission of this report to your committee.

Sincerely yours,

FRED G. AANDAHL,
Assistant Secretary of the Interior.

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Calendar No. 1164

84TH CONGRESS, 1st Session | SENATE | REPORT No. 1152

AMENDING THE JOINT RESOLUTION ENTITLED "JOINT RESOLUTION TO AUTHORIZE THE MERGER OF STREET-RAILWAY CORPORATIONS OPERATING IN THE DISTRICT OF COLUMBIA, AND FOR OTHER PURPOSES," APPROVED JANUARY 14, 1933

JULY 26, 1955.—Ordered to be printed

Mr. MCNAMARA, from the Committee on the District of Columbia, submitted the following

REPORT

[To accompany S. 2576]

The Committee on the District of Columbia, to whom was referred the bill (S. 2576) to amend the joint resolution entitled "Joint resolution to authorize the merger of street-railway corporations operating in the District of Columbia, and for other purposes," approved January 14, 1933, and for other purposes, after full consideration, report favorably thereon with amendments and recommend that the bill as amended do pass.

The amendments are as follows:

Page 3, line 1, strike the word "In" and insert in lieu thereof "It is hereby declared that because of cessation of mass transportation service in the District of Columbia an emergency exists and, therefore, in".

Page 3, line 20, strike the word "herein" and after the word "authorized" insert "in section 3 of this Act".

Page 3, line 23, strike the word "and" and insert in lieu thereof "or file any legal action they deem".

Page 4, line 7, after the word "by", insert the words "section 3 of".

Page 5, line 4, strike the word "herein" and after the word "granted" insert "in section 3 of this Act".

Page 5, lines 17 and 18, strike the words "revenues received from operations or from other".

Page 5, line 20, strike the word "herein", and after the word "granted" insert the words "in section 3 and this section".

Page 6, line 4, strike the word "herein", and after the word "granted" insert the words "in section 3 of this Act".

Page 6, line 8, strike "take, expropriate," and insert in lieu thereof "take".

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Page 6, beginning with the words "The operation" on line 9, strike all after down to and including line 15, and insert in lieu thereof the following:

The operation authorized in section 3 of this Act shall be deemed for and on behalf of the Capital Transit Company and there shall be continuity of accounting for the operations of the Company during the period of operation by the Commissioners. Nothing herein shall deny the Capital Transit Company the right to bargain with its employees or their bargaining agent nor deny it the right to take over the operation of its properties when the Commissioners are satisfied that the management can and will satisfactorily carry on its franchise duties.

Pages 6 and 7, strike all of section 8, and insert in lieu thereof the following:

SEC. 8. The revenues received from the operation of the properties of the Capital Transit Company shall be used to carry on the business and to pay the costs and expenses incident to taking over such operations and they shall be used for and on behalf of the Company in carrying out its franchise obligations.

Page 7, line 7, strike the word "herein" and after the word "granted" insert the words "in sections 3 and 6 of this Act".

Page 7, after line 11, insert a new section 10 and section 11 as follows:

SEC. 10. The Commissioners of the District of Columbia, during the year following the date of enactment of this Act, may authorize (including authorization under such contractual agreements as may be necessary) such public transportation within the District of Columbia, in addition to that which may be provided by the Capital Transit Company during such year, as may be necessary for the convenience of the public. Such additional transportation shall be furnished to the public at such rates and under such terms and regulations as may be recommended by the Public Utilities Commission, and approved by the Commissioners of the District of Columbia, for the purpose of providing a satisfactory system of public transportation within the District of Columbia during the year following the date of the enactment of this Act.

SEC. 11. The Commissioners of the District of Columbia may, with the approval of the Public Service Commission of the State of Maryland, exercise any of the powers granted in this Act to seize and operate property of the Capital Transit Company or to provide public transportation, or both, within the portion of the State of Maryland which is provided with public transportation by such company.

Page 7, lines 12 and 17, renumber sections 10 and 11 as sections 12 and 13, respectively.

The purpose of the bill as amended is to accomplish the following:

(1) Repeal the franchise of the Capital Transit Co.;

(2) Grant the Commissioners of the District of Columbia power to take possession of and operate the properties of the Capital Transit Co. as may be necessary until the repeal of the franchise legally becomes effective;

(3) Grant the Commissioners, as an alternative, authority to provide public transportation by contract or otherwise;

(4) Permit the Commissioners, with the approval of the Public Service Commission of Maryland, to provide public transportation within the State of Maryland as formerly provided by the Capital Transit Co.; and

(5) Provide for continuity and eliminate duplication of accounting for the operations of the company during the period of operation by the Commissioners.

The justification for this proposed legislation is set forth in the letter of July 18, 1955, from Samuel Spencer, President, Board of Commissioners of the District of Columbia, addressed to the chairman of the committee, and which is quoted in part as follows:

Shortly after midnight of June 30, 1955, there was a strike by the employees of Capital Transit Co. and since that time the public transportation service vehicles of the said company have not been operated. The cessation of service by Capital Transit Co. has had serious impact upon the public interest and all business in the District of Columbia. The functions of the Governments of the United States and the District of Columbia, and of the agencies of the said governments, have been impaired. The Commissioners have used every means within their command to bring about the resumption of transit service. Up to the present time, their efforts have been without success.

After thorough consideration of all relevant circumstances, the Commissioners have reached the conclusion that the long-term attitude and actions of the Capital Transit Co. management culminating in the emergency created by the stoppage of the transit service calls for the exercise of powers they do not now possess. This conclusion has been reached with the greatest reluctance, but in the belief that it is the best means of restoring public transportation service in the District of Columbia. As a last resort, the Commissioners recommend that legislation be enacted (1) to terminate the franchise of the Capital Transit Co. and (2) to grant the Commissioners power to take possession of and operate the properties of Capital Transit Co. as may be necessary during the 1-year period until the termination of the franchise legally becomes effective.

The reasons which have led the Commissioners to recommend the termination of the franchise of the company relate to certain events which have taken place in the history of the Capital Transit Co. going back to 1949 when the present controlling interests in the company acquired control.

In 1949 Louis E. Wolfson and persons associated with him sought to purchase a controlling interest in the stock of the Capital Transit Co. Under the law it was necessary for the Interstate Commerce Commission to approve this purchase. It is interesting to note that after a full hearing Mr. Vernon Baker, the examiner who heard this matter, recommended disapproval of the purchase. The report of Division 4 of the Interstate Commerce Commission, dated September 2, 1949, contains the following statement:

"The examiner recommended denial of the application because, in his opinion, applicants had failed to establish by competent witnesses that the proposed transaction would be consistent with the public interest, noting in particular that only one of the applicants, Weinstein, was present at the hearing as a witness; that the record was wholly lacking in evidence which would show, and it was not claimed, that the transaction would benefit in any way the carriers or the public which they serve; that, on the other hand, applicants admittedly have had no experience in transportation, live in places far removed from the territory in which the carriers concerned operate, and presumably have no knowledge of or interest in the problems of the public in that territory; and that acquisition of control of the carriers by persons so unqualified by knowledge and experience, and whose sole purpose is to obtain a reasonable return on their investments, would present definite hazards to the continued performance by transit and bus lines of adequate transportation service to the public."

Mr. Doran S. Weinstein, who became a vice president of Capital Transit Co. after the Wolfsons acquired control, testified as follows before Examiner Baker:

"EXAMINER. As I gather from the testimony, your primary purpose in buying this stock is not to run a public utility, but as a means of earning income from your money?

"WITNESS. That is right, sir.

"EXAMINER. Do you propose to actively participate in the activities of the Capital Transit Co.?

"WITNESS. We have no plans to that effect, sir. Our only interest in that respect is to protect our investment."

Division 4, however, did not adopt the recommendation of the examiner but approved the purchase.

Shortly thereafter the Wolfson interests purchased approximately 45 percent of the stock at a price of $20 per share. Their total investment at that time was $2,189,000. They subsequently increased their holdings to 52 percent. On December 31, 1949, the earned surplus of the company was $5,166,258. On May 31, 1955, earned surplus was $2,070,990, or a reduction of $3,095,268 since the Wolfson interests acquired control of the company. On December 31, 1949, the company had in cash $2,734,888, and marketable securities of $4,005,353, or a total of cash and marketable securities of $6,740,241. On May 31, 1955, the company had cash of $2,663,025 (but no marketable securities), which shows a reduction between the aforesaid dates in cash and marketable securities of $4,077,216.

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The annual dividend rate at the time the Wolfsons bought control was $2 per share. In 1950 dividends were paid at the rate of $3 per share, in 1951 $4, in 1952 $15.60, including a special dividend of $10, in 1953 $6.40, and in 1954 $6.02, including a dividend in kind of $1.22 per share. These figures are before the 4 to 1 stock split. These increases in dividends are in sharp contrast to the continuous decrease in earnings from $5.96 per share in 1951, to $4.40 in 1952, to $4 in 1953, to $2.64 in 1954.

Between September 1949 and May 31, 1955, under the present management of Capital Transit Co., dividends have been paid in cash in the amount of $8,808,000. There was also a distribution in kind with a total book value of $518,330. The total amount, therefore, of cash dividends and distribution in kind, treating the distributions in kind at the stated book value, amounts to $9,326,330. Stated in another way, this amounts to $38.86 per share on the basis of the shares before the split of the stock by the present management.

During the years from 1949 to 1954 the company was granted 4 fare increases by the Public Utilities Commission.

Primarily because of the policies pursued by the Capital Transit Co. after the Wolfson interests acquired control, the Senate on July 28, 1953, passed a resolution ordering a complete investigation of public transportation in the District of Columbia. The investigation was made by a subcommittee headed by Senator Frederick G. Payne.

This subcommittee, after a complete investigation of public transportation serving the District of Columbia, in its report (S. Rept. No. 1274 of the 83d Cong., 2d sess.) said, in reference to Capital Transit Co., on pages 39 and 40:

"The real question which arises out of the present dividend policy is whether management is depleting the resources of the company to the point where its ability to render service may be impaired either now or in the foreseeable future; whether at some time in the future the management will have stripped everything of value from the company and will then not be able to produce the necessary capital to provide adequate equipment to serve its patrons."

On page 41 of that report, the committee said it views the transit company's recent dividend policy under the Wolfson management: "as a course of action wholly inconsiderate of the public interest, wholly inconsistent with the philosophy of fair and reasonable return to the owners of a regulated utility, and wholly inconsisent with the stated intentions of representatives of the Wolfson group before the ICC."

Under Chapter VII: General Management Policies of Capital Transit Co., the Senate subcommittee concluded with this paragraph:

"This general managerial attitude of the Wolfson group toward the problems previously discussed in this section and their public statements clearly indicate that they place their own private financial interests above those of the public in their operation of Capital Transit Co. This attitude has given credibility to the widespread public belief that the Wolfson group is 'milking' the Capital Transit Co. preparatory to dumping the system on the Government. Whether this is the intent of the group the subcommittee cannot, of course, conclusively determine; but there are strong indications that this well may be their ultimate goal."

There have been other indications of an attitude on the part of the present management of the Capital Transit Co., which place private benefit and profit ahead of the paramount public interest in the operation of property devoted to public service.

Mr. Wolfson, chairman of the board of directors, testified under oath before the Public Utilities Commission in that body's investigation of current financial practices and position of the company (Formal Case No. 433) on April 6, 1954, that in an interview with Mr. Richard Fryklund, which appeared in the Sunday Star of March 28, 1954, he had stated as follows:

"I have a responsibility to see that the stockholders of Capital Transit get a fair return. If there is no fair return, then I will have to take other action to protect their equity. If necessary, I will even go so far as to liquidate the company. I'll protect the stockholders, within the limits of the law, in spite of anything, including Congress and the Public Utilities Commission" (transcript, pp. 74–75).

In his testimony before the Commission, Mr. Wolfson stated that in the interview cited he had also said that he was 100 percent opposed to liquidation of any corporation.

Mr. Broadwater, president of Capital Transit Co., testified before the Public Utilities Commission in the same proceeding, that he had made a speech at a joint meeting of the public utilities committee and railroads and transit lines committee of the Washington Board of Trade on February 26, 1952, in which he said that

Capital Transit must have assurance of a return of at least 7½ percent on its investment, and that officials of the company would not stand idly by and see the stockholders suffer financially or see the company destroyed (transcript, pp. 533–534). The president of the company further testified in that proceeding that he had written a letter under date of January 2, 1954, to the Honorable Frederick G. Payne, chairman of the Senate subcommittee, in which he said, among other things:

"Under these circumstances the day is fast approaching when private ownership would have to give serious consideration as to whether it wants to continue operation or whether it would be more prudent to surrender its franchise and liquidate its investment" (transcript, p. 535, Formal Case No. 433).

On June 6, 1955, the Capital Transit Co. filed with the Public Utilities Commission of the District of Columbia a request for a fare increase. The company case was presented in public hearing on June 21, 22, and 24. Cross-examination is presently scheduled to begin on July 25, 1955. On July 7, 1955, the Public Utilities Commission issued a press release stating its concept of its powers. This statement indicated that the regular rate case could not be concluded forthwith but that a company request to offset the cost of a new labor contract with a compensating fare increase could be acted upon promptly.

The present stoppage of service of the Capital Transit Co. began on July 1, 1955, after expiration of a 3-year contract between the company and National Capital Local Division 689, Amalgamated Association of Street, Electric Railway and Motor Coach Employees of America. Throughout the negotiations for a new labor contract, the company has maintained that it could not grant merited increases to its employees until it first received or was guaranteed an increase of income.

In a hearing before the Senate District Subcommittee on Public Health, Education, Welfare, and Safety, on July 12, 1955, Louis E. Wolfson, chairman of the board of directors of Capital Transit Co., in his prepared statement submitted to that committee, referred to the demand of his striking employees for increased wages and said: "We feel that they are entitled to a fair increase."

Later in the prepared statement is found the following paragraph:

"Without additional revenues, we cannot begin to meet union requirements. We cannot give our employees more money for the simple reason that we don't have it."

This testimony of the chairman of the board clearly and succinctly states the position that management has taken consistently during the efforts by the Commissioners to bring about negotiations looking to the settlement of the strike. This position places the protection of present profits above franchise obligations of service even to the point of completely stopping transit service.

Contrary to the company claims of lacking money, the facts are that the company earned a net income before income taxes of about $1,126,000 in 1954; on May 31, 1955, had an earned surplus of $2,070,990 and cash of $2,663,025; and on April 1, 1955, increased its quarterly dividend from $0.20 per share (after 4-to-1 split) to $0.30 per share.

The facts hereinabove stated support the conclusion stated by the Committee on the District of Columbia in Senate Report No. 1274, 83d Congress, 2d session, at pages 62 and 63 thereof, that the attitude of the present management indicates that it places private financial interests above the public interest in the operation of Capital Transit Co. These facts together with other information that has been presented to the Commissioners lead them to the conclusion that the proposed legislation to repeal the franchise of Capital Transit Co. is necessary in the public interest.

The power to take possession of and operate the Capital Transit Co. property and assets as may be necessary during the final year of the franchise period is regarded by the Commissioners as purely corollary to the termination of franchise. The attitude of the present management of the company poses a threat of paralysis to essential mass transit service which in this year can be provided only through use of the company properties. If the company persists in its disregard of its franchise obligations, the public order will be in jeopardy. The Commissioners consider that the powers requested in the recommended legislation are necessary in the public interest.

The full committee and the Subcommittee on Public Health, Education, Welfare, and Safety have conducted extensive hearings on this entire subject, as well as several legislative proposals. As a result of these hearings, which were held on June 27 and 30 and

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July 7, 12, and 21, 1955, your committee has reached the conclusion that the responsible officials of the local government have presented a strong case to substantiate their submission of this proposal. The committee is of the opinion that it is the duty of the Congress to grant to these officials this form of self-rule in order to enable them to provide public transportation.

The Commissioners are without authority to provide public transportation for the District of Columbia in this or any similar situation involving a work stoppage, unless this type of legislation is enacted.

CHANGES IN EXISTING LAW

In compliance with subsection (4) of rule XXIX of the Standing Rules of the Senate, changes in existing law in the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

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SEC. 12. The Washington Railway and Electric Company, if the unification herein provided for shall become effective, shall remain subject to the jurisdiction of the Public Utilities Commission. Any sinking fund held by it shall remain available for the discharge of securities for which it remains liable and which are secured directly or indirectly, by any lien on property turned over to the Capital Transit Company.

SEC. 13. That Congress reserves the right to alter, amend, or repeal this resolution, or any charter or certificate of incorporation made thereunder, and any and all rights of franchise created by this resolution shall terminate one year following its repeal.

SEC. 14. All rights of franchise of Capital Transit Company created by this resolution are hereby repealed in accordance with the terms of section 13 hereof.

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